

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAMELA NUMERICK,

No. 12-14427

Plaintiff,

District Judge George Caram Steeh

v.

Magistrate Judge R. Steven Whalen

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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REPORT AND RECOMMENDATION

This is a Social Security Disability case brought under 42 U.S.C. § 405(g). Before the Court is Defendant's Unopposed Motion to Remand [Doc. #6], which has been referred for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). I recommend that the motion be GRANTED, and that the case be remanded to the Commissioner pursuant to Sentence Six of 42 U.S.C. § 405(g), with this Court retaining jurisdiction pending the completion of further administrative proceedings on remand.

DISCUSSION

Defendant Commissioner makes the following request:

"It appears that significant portions of the recording of the hearing held on March 7, 2011, are inaudible. Particularly, there are inaudible portions located during the Administrative Law Judge's questioning of the vocational expert and many statements are unclear. Pursuant to sentence six of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), the Appeals Council requests remand of this case to an Administrative Law Judge for a *de novo* hearing."

Counsel for the Plaintiff does not object to the Commissioner's request.

"Sentence-six remands may be ordered in only two situations: where the Secretary requests a remand before answering the complaint, or where new, material evidence is

adduced that was for good cause not presented before the agency.” *Shalala v. Schaefer*, 509 U.S. 292, 297 n. 2, 113 S.Ct. 2625, 125 L.Ed.2d 239 (1993). The present case falls within the first category. Moreover, in a Sentence Six remand, the district court retains jurisdiction pending further agency action. *Marshall v. Comm'r of Soc. Sec.*, 444 F.3d 837, 841 (6th Cir.2006).

RECOMMENDATION

I recommend that the Defendant’s Unopposed Motion to Remand [Doc. #6] be GRANTED pursuant to Sentence Six of 42 U.S.C. § 405(g), and that the case be REMANDED to an Administrative Law Judge for a *de novo* hearing, with this Court retaining jurisdiction pending the completion of further administrative proceedings on remand.

Any objections to this Report and Recommendation must be filed within 14 days of service of a copy hereof as provided for in 28 U.S.C. §636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within 14 days of service of any objecting party’s timely filed objections, the opposing party may file a response. The response shall be not more than 20 pages in length

unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objection.

s/R Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: December 18, 2012

The undersigned certifies that a copy of the foregoing order was served on the attorneys of record and by electronic means or U.S. Mail on December 18, 2012.

s/Eddrey Butts
Case Manager